

State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-39547  
MES&TKK  
cjs  
P1  
FMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

WANTED:  
today

D/NOTE

GENCAT

- 1 AN ACT...relating to: waiving certain federal bond limitations allocated to cities  
2 and counties and requiring the D C department of Commerce to develop a system for  
3 reallocating the bond limitations to other state and local units of government.

***Analysis by the Legislative Reference Bureau***

Current federal law, the American Recovery and Reinvestment Act of 2009, authorizes certain local governments to issue several different types of tax-exempt bonds. Some of the bonds, which are called recovery zone facility bonds (bonds), may be issued only by counties or by cities with a population of at least 100,000, and the amount of bonds that may be issued is limited. Federal law allocates the limited amount of bonds that may be issued by counties and cities that meet the population threshold (local units).

Federal law also authorizes local units to waive their allocation, in which case the state in which the local units are located may reallocate the allocation to other units of government in that state.

D This bill waives the allocation to local units in this state and requires the D department of Commerce (DOC) to develop a system to reallocate the allocation. Under the bill other units of government, including a city, village, town, county; a special purpose district; a state authority, such as the Wisconsin Housing and Economic Development Authority, the Wisconsin Health and Educational Facilities Authority, or the University of Wisconsin Hospitals and Clinics Authority; or a local housing, redevelopment, or community development authority, may apply to issue bonds under the reallocation of the federal bond limitation as established by DOC.

Under current law, a city, village, or town may issue industrial revenue bonds for certain specified projects. The bill adds to the definition of "project" facilities

constructed using the proceeds from a recovery zone facilities bond or from a Midwestern disaster area bond (tax-exempt bonds authorized under the federal Heartland Disaster Tax Relief Act of 2008).

Under current law, the state, regional planning commissions, federally recognized Indian tribes and bands, and local units of government, including municipalities, counties, school districts, and other special purpose districts, may enter into intergovernmental cooperation agreements for the receipt or furnishing of services or joint exercise of powers. This bill adds a housing authority, a redevelopment authority, and a community development authority to the list of entities that may enter into such agreements. ✓

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 66.0301 (1) (a) of the statutes is amended to read:

as affected by 2009 Wisconsin Act 28 ✓

66.0301 (1) (a) Except as provided in pars. (b) and (c), in this section "municipality" means the state or any department or agency thereof, or any city, village, town, county, school district, public library system, public inland lake protection and rehabilitation district, sanitary district, farm drainage district, metropolitan sewerage district, sewer utility district, solid waste management system created under s. 59.70 (2), local exposition district created under subch. II of ch. 229, local professional baseball park district created under subch. III of ch. 229, local professional football stadium district created under subch. IV of ch. 229, local cultural arts district created under subch. V of ch. 229, transit authority created under s. 66.1039, long-term care district under s. 46.2895, water utility district, mosquito control district, municipal electric company, county or city transit commission, commission created by contract under this section, taxation district, regional planning commission, housing authority created under s. 66.1201, redevelopment authority created under s. 66.1333, community development authority created under s. 66.1335, or city-county health department.

History: 1999 a. 150 ss. 348, 349, 352, 353; 1999 a. 167 s. 38; 2001 a. 16, 30; 2007 a. 20, 43; 2009 a. 28.

→ (A)

\*\*\*NOTE: This is drafted according to your instructions but it may not be necessary. See §. 66.0311. Doesn't §. 66.0311 accomplish your goal?

SECTION 2. 66.1103 (2) (k) 22. of the statutes is created to read:

66.1103 (2) (k) 22. Facilities with respect to which either a recovery zone facility bond under 26 USC 1400U-3 or a qualified Midwestern disaster area bond under 26 USC 1400N (a) is issued.

SECTION 3. 66.1104 of the statutes is created to read:

**66.1104 Waiver of recovery zone facility bond limitation. (1)**

DEFINITIONS. In this section:

(a) "Authority" means a body created under s. 66.1201, 66.1333, or 66.1335; under subch. II of ch. 114 or subch. III of ch. 149; or under ch. 52, 231, 232, 233, 234, 235, 237, or 279.

(b) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a), and includes a commission created by contract under s. 66.0301.

(c) "Recovery zone bond" means a bond described under 26 USC 1400U-3 (b) (1).

\*\*\*\*NOTE: Is this definition OK? Is it too broad? Please let me know if you want the definition limited, for example, a recovery zone economic development bond under 26 USC 1400U-1 (a) (4) (A) a recovery zone facility bond under 26 USC 1400U-1 (a) (4) (B) or a recovery zone facility bond under 26 USC 1400U-3 (b) (1).

(2) WAIVER. (a) The unused allocation of a recovery zone bond received by a city or county is waived on the effective date of this subsection [LRB inserts date], and the allocation may be reallocated by the department of commerce under s. 560.033.

\*\*\*\*NOTE: Is paragraph (a) consistent with your intent? Part of the instructions state that "the intent is that the waiver will occur by enactment of the legislation, without any further action by the county or city", which par. (a) accomplishes, but another part of the instructions states that federal law specifies that the county or city "be the entity that makes the waiver, so it is important that the legislation provide that the waiver is made by the counties and cities."

\*\*\*\*NOTE: I'm not sure how to reconcile these instructions. It seems that either the legislation must specify that upon the enactment of the bill the allocation is waived (which it does), or the cities and counties must take action to waive the allocation (which may be required by federal law, but is not done in the bill).

paragraph  
limitation  
shall be considered  
1 (b) ~~Allocation~~ received by a city or county ~~will be treated~~ as unused, except  
2 for any recovery zone bonds that have been sold, or are subject to a contract for sale  
3 that takes effect, before the effective date of this ~~subsection~~ [LRB inserts date].

2nd  
4 (c) Not later than the first day of the ~~second~~ month beginning after the effective  
5 date of this ~~subsection~~, a city or county that has ~~an allocation of recovery zone bonds~~  
6 that ~~is~~ not unused, as that term is used under par. (b), shall send written notice to  
7 the department of commerce regarding ~~the amount of~~ the allocation that is not  
8 unused. ~~paragraph~~  $\Delta \dots \Delta$  [LRB inserts date]

9 (3) REALLOCATION. Any authority or local governmental unit may apply for a  
10 reallocation of the recovery zone bond limitation ~~in accordance with the system~~  
11 established by the department of commerce under s. 560.033.

12 SECTION 4. 560.033 of the statutes is created to read:

13 **560.033 Reallocation of limitation on recovery zone facility bonds. (1)**

14 REALLOCATION. (a) The department, by rule, shall establish under 26 USC 1400U-1

15 (a) (3) (A) and administer a system for the reallocation of the limitation on the  
16 issuance of recovery zone facility bonds, as defined under 26 USC 1400U-3 (b) (1),  
17 among ~~municipalities~~ <sup>authorities</sup> as defined in s. ~~66.0301~~ <sup>66.1104(1)(a)</sup> and ~~any corporation formed on~~

18 behalf of those municipalities, and among intergovernmental commissions created  
19 by contract under s. 66.0301, and among housing authorities created under s.  
20 66.1201 to 66.1211, and among redevelopment authorities created under s. 66.1333  
21 (2m), and among community development authorities created under s. 66.1335, and  
22 among authorities created in subch. II of ch. 114, subch. III of ch. 149, and in chs. 52,  
23 ~~231, 232, 233, 234, 235, 237, and 279.~~ <sup>local governmental units, as defined in</sup>  
 $\Delta \dots \Delta$  <sup>P. 66.1104(1)(b)</sup>

\*\*\*\*NOTE: The drafting instructions for this subsection directed me to permit  
Commerce to administer a system for the reallocation of bonds "among the cities, villages,  
towns, special districts, authorities, and commissions of the state." Is this subsection  
consistent with your intent?

Please note the following changes from this drafting instruction:

1. I substituted the phrase "municipalities, as defined in s. 67.01 (5), and any corporation formed on behalf of those municipalities" stats., for the clause "cities, villages, towns [and] special districts." This phrase is taken from s. 560.032, stats., which governs the allocation of volume cap on tax-exempt bonds, and on which this section is modelled.

Please carefully review this definition of "municipality" to ensure that it is consistent with your intent. In particular, note that the drafting instructions did not include a reference to "counties," but that counties are included in the definition of municipality found at s. 67.01 (5). Is that okay?

2. The use of the phrase "authorities and commissions of this state" is vague; there are a number of authorities and commissions identified in the statutes having different powers and responsibilities.

To avoid ambiguity, I included a statutory reference to the authorities identified in an e-mail from Mr. Goethe to Senior Legislative Attorney Marc Shovers, your office, and others dated December 4, 2009. Please review the cross-references to the authorities to ensure that all of the authorities identified in this bill should remain in the next version of the bill.

The only reference to "commission" is to intergovernmental commissions created by contract under s. 66.0301, stats. Are there other commissions, not included in the bill by reference to the definition of "municipality at s. 67.01 (5), stats., that should be included?

1 (2) AMENDMENT TO REALLOCATION. At any time, the department may promulgate  
2 rules to revise the reallocation system established under sub. (1), except that any  
3 revision under this subsection does not apply to any reallocation under which the  
4 recipient of that <sup>re</sup>allocation has adopted a resolution authorizing the issuance of a  
5 recovery zone facility bond, as defined in 26 USC 1400U-3 (b) (1).

6 (3) CONDITIONS. The department may establish by rule, any procedure for, and  
7 place any condition upon, the granting of a reallocation under this section which the  
8 department deems to be in the best interest of the state <sup>3</sup>including, but not limited to,  
9 a requirement that a cash deposit, at a rate established by the department in the  
10 rules, be a condition for a reallocation.

11 (4) CONSIDERATION OF ALTERNATIVE SOURCE OF FINANCING. Before making a  
12 reallocation under this section, the department shall consider the availability of  
13 qualified Midwestern disaster area bonds, as defined under 26 USC 1400N (a), as  
14 modified by P.L. 110-343, title VII, Subtitle A, section 702 (d) (intro.) and (1), as an

- 1 alternative source of financing for a project for which the issuance of recovery zone
- 2 facility bonds are sought.

3 (END)

as defined in 26 USC

1400U-3(b)(1),

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D-NOTE

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3954/?dn

TKK:/:....

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— date —

Senator Lassa:

INS-DN → Do you wish to require the Department of Commerce to submit proposed administrative rules under s. 560.033 (1), as created in this bill, to the Legislative Council staff by any particular date, or to authorize the preparation of emergency rules?

Tracy K. Kuczenski  
Legislative Attorney  
Phone: (608) 266-9867  
E-mail: [tracy.kuczenski@legis.wisconsin.gov](mailto:tracy.kuczenski@legis.wisconsin.gov)

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3954/P1ins  
MES&TKK.....

INS DN

Created s. 66.1103 (2) (k) 22. contains a cross-reference to "26 USC 1400N (a)", and created s. 560.033 (4) contains a cross-reference to "26 USC 1400N (a), as modified by P.L. 110-343, title VII, Subtitle A, section 702 (d) (intro.) and (1)." Although my version of 26 USC 1400N in the November 2009 update of Tax Analysts does not contain the updates from P.L. 110-343, I assume that federal statutes are updated and the reference to the Public Law is not necessary <sup>use em dash</sup> Congress has acted and amended the law. The treatments in the bill should be consistent, however, so I'm wondering if you think there is any reason that the bill should refer to P.L. 110-343 or if the simple reference to 26 USC 1400N (a) is sufficient.

→ MES

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3954P1dn  
TKK&MES:cjs:jf

December 8, 2009

Senator Lassa:

Created s. 66.1103 (2) (k) 22. contains a cross-reference to "26 USC 1400N (a)", and created s. 560.033 (4) contains a cross-reference to "26 USC 1400N (a), as modified by P.L. 110-343, title VII, Subtitle A, section 702 (d) (intro.) and (1)." Although my version of 26 USC 1400N in the November 2009 update of Tax Analysts does not contain the updates from P.L. 110-343, I assume that federal statutes are updated and the reference to the Public Law is not necessary — Congress has acted and amended the law. The treatments in the bill should be consistent, however, so I'm wondering if you think there is any reason that the bill should refer to P.L. 110-343 or if the simple reference to 26 USC 1400N (a) is sufficient.

Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov

Do you wish to require the Department of Commerce to submit proposed administrative rules under s. 560.033 (1), as created in this bill, to the Legislative Council staff by any particular date, or to authorize the preparation of emergency rules?

Tracy K. Kuczenski  
Legislative Attorney  
Phone: (608) 266-9867  
E-mail: tracy.kuczenski@legis.wisconsin.gov

**Kuczenski, Tracy**

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**From:** Groethe, Reed [reed.groethe@foley.com]  
**Sent:** Thursday, December 10, 2009 9:16 AM  
**To:** Kuczenski, Tracy  
**Cc:** Wilson, Danielle; ghubbard@broydrick.com; Worcester, Barbara; Ryan, David B.; Templen, Lynda R. LRT (5505); Shovers, Marc  
**Subject:** RE: Draft review: LRB 09-3954/P1 Topic: City and county waiver of allocation of federal bond authority

**From the Desk of: Reed Groethe**



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[www.foley.com](http://www.foley.com)

Tracy:

Inasmuch as federal tax law requires recovery zone facility bonds to be issued before January 1, 2011, we would prefer to see rules in place much sooner. Perhaps 30 days would be appropriate.

We expect that the Department of Commerce should be able to put rules in place fairly quickly for several reasons, including the fact that they recently promulgated similar rules with respect to Midwestern disaster area bonds.

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**From:** Kuczenski, Tracy [mailto:Tracy.Kuczenski@legis.wisconsin.gov]  
**Sent:** Thursday, December 10, 2009 8:54 AM  
**To:** Groethe, Reed; Shovers, Marc  
**Cc:** Wilson, Danielle; ghubbard@broydrick.com; Worcester, Barbara; Ryan, David B.; Templen, Lynda R. LRT (5505)  
**Subject:** RE: Draft review: LRB 09-3954/P1 Topic: City and county waiver of allocation of federal bond authority

Hi Reed -

Thanks for your comments; I have a minor question regarding my portion of the draft (Ch. 560 provisions). Marc Shovers will contact you directly regarding his portion of the draft.

You indicated both that requiring Commerce to submit proposed administrative rules to Legislative Council staff by a specified date would be appropriate and also that granting emergency rule-making authority to Commerce in the interim would be appropriate. If I require Commerce to submit proposed rules no later than three months after the effective date of the bill, will that provide Commerce with sufficient time formulate the proposed rules? Longer? Shorter?

Tracy

*Tracy K. Kuczenski*  
 Legislative Attorney  
 Wisconsin Legislative Reference Bureau  
 (608) 266-9867  
[Tracy.Kuczenski@legis.wisconsin.gov](mailto:Tracy.Kuczenski@legis.wisconsin.gov)

12/10/2009

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**From:** Groethe, Reed [mailto:reed.groethe@foley.com]  
**Sent:** Wednesday, December 09, 2009 10:48 AM  
**To:** Shovers, Marc; Kuczenski, Tracy  
**Cc:** Wilson, Danielle; ghubbard@broydrick.com; Worcester, Barbara; Ryan, David B.; Templen, Lynda R. LRT (5505)  
**Subject:** Draft review: LRB 09-3954/P1 Topic: City and county waiver of allocation of federal bond authority

Marc and Tracy:

I have marked some comments on the attached copy of the draft legislation, including responses to your questions.

Please feel free to call me (at 414-297-5764) or Dave Ryan (at 414-297-5761) if you want to discuss any of these comments.

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Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise

12/10/2009

the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3954P1dn  
TKK&MES:cjs:jf

December 8, 2009

Senator Lassa:

Created s. 66.1103 (2) (k) 22. contains a cross-reference to "26 USC 1400N (a)", and created s. 560.033 (4) contains a cross-reference to "26 USC 1400N (a), as modified by P.L. 110-343, title VII, Subtitle A, section 702 (d) (intro.) and (1)." Although my version of 26 USC 1400N in the November 2009 update of Tax Analysts does not contain the updates from P.L. 110-343, I assume that federal statutes are updated and the reference to the Public Law is not necessary — Congress has acted and amended the law. The treatments in the bill should be consistent, however, so I'm wondering if you think there is any reason that the bill should refer to P.L. 110-343 or if the simple reference to 26 USC 1400N (a) is sufficient.

*The reference to P.L. 110-343 is necessary in this case. The Midwestern Disaster Area Bonds provisions are not codified. The law says that IRC § 1400N shall be applied with specified modifications.*

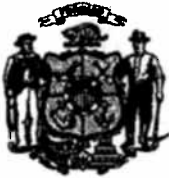
Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov

Do you wish to require the Department of Commerce to submit proposed administrative rules under s. 560.033 (1), as created in this bill, to the Legislative Council staff by any particular date, or to authorize the preparation of emergency rules?

*① Given the limited time frame for issuing recovery zone facility bonds, requiring Administrative Rules by a specified date would be appropriate.*

Tracy K. Kuczenski  
Legislative Attorney  
Phone: (608) 266-9867  
E-mail: tracy.kuczenski@legis.wisconsin.gov

*② Yes, please authorize the preparation of emergency rules.*



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-3954/P1  
MES&TKK:cjs:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to amend* 66.0301 (1) (a); and *to create* 66.1103 (2) (k) 22., 66.1104 and  
2 560.033 of the statutes; **relating to:** waiving certain federal bond limitations  
3 allocated to cities and counties and requiring the Department of Commerce to  
4 develop a system for reallocating the bond limitations to other state and local  
5 units of government.

with a population of at least 100,000

***Analysis by the Legislative Reference Bureau***

including  
The  
Current federal law, the American Recovery and Reinvestment Act of 2009, authorizes certain local governments to issue several different types of tax-exempt bonds. Some of the bonds, which are called recovery zone facility bonds (bonds), may be issued only by counties or by cities with a population of at least 100,000, and the amount of bonds that may be issued is limited. Federal law allocates the limited amount of bonds that may be issued by counties and cities that meet the population threshold (local units) the limited amount of bonds that may be issued. (to)

Federal law also authorizes local units to waive their allocation, in which case the state in which the local units are located may reallocate the allocation to other units of government in that state.

This bill waives the allocation to local units in this state and requires the Department of Commerce (DOC) to develop a system to reallocate the allocation. Under the bill other units of government, including a city, village, town, county; a special purpose district; a state authority, such as the Wisconsin Housing and Economic Development Authority, the Wisconsin Health and Educational Facilities

Authority, or the University of Wisconsin Hospitals and Clinics Authority; or a local housing, redevelopment, or community development authority, may apply to issue bonds under the reallocation of the federal bond limitation as established by DOC.

Under current law, a city, village, or town may issue industrial revenue bonds for certain specified projects. The bill adds to the definition of “project” facilities constructed using the proceeds from a recovery zone facilities bond or from a Midwestern disaster area bond (tax-exempt bonds authorized under the federal Heartland Disaster Tax Relief Act of 2008).

Under current law, the state, regional planning commissions, federally recognized Indian tribes and bands, and local units of government, including municipalities, counties, school districts, and other special purpose districts, may enter into intergovernmental cooperation agreements for the receipt or furnishing of services or joint exercise of powers. This bill adds a housing authority, a redevelopment authority, and a community development authority to the list of entities that may enter into such agreements.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1       SECTION 1. 66.0301 (1) (a) of the statutes, as affected by 2009 Wisconsin Act 28,  
2       is amended to read:

3       66.0301 (1) (a) Except as provided in pars. (b) and (c), in this section  
4       “municipality” means the state or any department or agency thereof, or any city,  
5       village, town, county, school district, public library system, public inland lake  
6       protection and rehabilitation district, sanitary district, farm drainage district,  
7       metropolitan sewerage district, sewer utility district, solid waste management  
8       system created under s. 59.70 (2), local exposition district created under subch. II of  
9       ch. 229, local professional baseball park district created under subch. III of ch. 229,  
10      local professional football stadium district created under subch. IV of ch. 229, local  
11      cultural arts district created under subch. V of ch. 229, transit authority created  
12      under s. 66.1039, long-term care district under s. 46.2895, water utility district,  
13      mosquito control district, municipal electric company, county or city transit  
14      commission, commission created by contract under this section, taxation district,

1 regional planning commission, housing authority created under s. 66.1201.  
 2 redevelopment authority created under s. 66.1333. community development  
 3 authority created under s. 66.1335. or city-county health department.

\*\*\*\*NOTE: This is drafted according to your instructions, but it may not be necessary. See s. 66.0311. Doesn't s. 66.0311 accomplish your goals? ← Not entirely.

4 **SECTION 2.** 66.1103 (2) (k) 22. of the statutes is created to read:

5 66.1103 (2) (k) 22. Facilities with respect to which either a recovery zone facility  
 6 bond under 26 USC 1400U-3 or a qualified Midwestern disaster area bond under 26  
 7 USC 1400N (a) (is issued), as modified by P.L. 110-343, Subtitle A,  
 8 section 702 (d) (invo.) and (1).

8 **SECTION 3.** 66.1104 of the statutes is created to read:

9 **66.1104 Waiver of recovery zone facility bond limitation. (1)**

10 **DEFINITIONS.** In this section:

11 (a) "Authority" means a body created under s. 66.1201, 66.1333, or 66.1335;  
 12 under subch. II of ch. 114 or subch. III of ch. 149; or under ch. 52, 231, 232, 233, 234,  
 13 235, 237, or 279.

14 (b) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a), and  
 15 includes a commission created by contract under s. 66.0301.

16 (c) "Recovery zone bond" means a bond described under 26 USC 1400U-3 (b)  
 17 (1).

Yes - There is no need to refer to recovery zone economic development bond.

\*\*\*\*NOTE: Is this definition OK? Please let me know if you want the definition to cross-reference, for example, a recovery zone economic development bond under 26 USC 1400U-1 (a) (4) (A) or a recovery zone facility bond under 26 USC 1400U-1 (a) (4) (B).

checked

18 **(2) WAIVER.** (a) The unused allocation of a recovery zone bond limitation  
 19 received by a city or county is waived by the county or the city on the effective date of this paragraph .... [LRB  
 20 inserts date], and the allocation may be reallocated by the department of commerce  
 21 under s. 560.033.

\*\*\*\*NOTE: Is par. (a) consistent with your intent? Part of the instructions state that "the intent is that the waiver will occur by enactment of the legislation, without any

further action by the county or city", which par. (a) accomplishes, but another part of the instructions states that federal law specifies that the county or city "be the entity that makes the waiver, so it is important that the legislation provide that the waiver is made by the counties and cities."

\*\*\*\*NOTE: I'm not sure how to reconcile these instructions. It seems that either the legislation must specify that upon the enactment of the bill the allocation is waived (which it does), or the cities and counties must take action to waive the allocation (which may be required by federal law, but is not done in the bill).

(b) A limitation allocation received by a city or county shall be considered as unused, except for any recovery zone bonds that have been sold, or are subject to a contract for sale that takes effect before the effective date of this paragraph .... [LRB inserts date] and are issued within 30 days after the effective date of this paragraph.  
(c) Not later than the first day of the 2nd month beginning after the effective date of this paragraph .... [LRB inserts date], a city or county that has a limitation allocation that is not unused, as that term is used under par. (b), shall send written notice to the department of commerce regarding the limitation allocation that is not unused.

(3) REALLOCATION. Any authority or local governmental unit may apply for a reallocation of the recovery zone bond limitation allocation in accordance with the system established by the department of commerce under s. 560.033.

SECTION 4. 560.033 of the statutes is created to read:

**560.033 Reallocation of limitation on recovery zone facility bonds. (1)**

REALLOCATION. (a) The department, by rule, shall establish under 26 USC 1400U-1 (a) (3) (A) and administer a system for the reallocation of the limitation on the issuance of recovery zone facility bonds, as defined under 26 USC 1400U-3 (b) (1), among authorities, as defined in s. 66.1104 (1) (a), and local governmental units, as defined in s. 66.1104 (1) (b).

\*\*\*\*NOTE: The drafting instructions for this subsection directed me to permit Commerce to administer a system for the reallocation of bonds "among the cities, villages,

towns, special districts, authorities, and commissions of the state." Is this subsection  
consistent with your intent? \_\_\_\_\_

Yes

**(2) AMENDMENT TO REALLOCATION.** At any time, the department may promulgate rules to revise the reallocation system established under sub. (1), except that any revision under this subsection does not apply to any reallocation under which the recipient of that reallocation has adopted a resolution authorizing the issuance of a recovery zone facility bond, as defined in 26 USC 1400U-3 (b) (1).

**(3) CONDITIONS.** The department may, by rule, establish any procedure for, and place any condition upon, the granting of a reallocation under this section which the department deems to be in the best interest of the state, including, but not limited to, a requirement that a cash deposit, at a rate established by the department in the rules, be a condition for a reallocation.

**(4) CONSIDERATION OF ALTERNATIVE SOURCE OF FINANCING.** Before making a reallocation under this section, the department shall consider the availability of qualified Midwestern disaster area bonds, as defined under 26 USC 1400N (a), as modified by P.L. 110-343, title VII, Subtitle A, section 702 (d) (intro.) and (1), as an alternative source of financing for a project for which the issuance of recovery zone facility bonds, as defined in 26 USC 1400U-3 (b) (1), are sought.

**(END)**



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-3954/P1

MES&TKK:cis:jf

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stays

insert

TODAY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen Cat

AN ACT *to amend* 66.0301 (1) (a); and *to create* 66.1103 (2) (k) 22., 66.1104 and  
560.033 of the statutes; **relating to:** waiving certain federal bond limitations  
allocated to cities and counties and requiring the Department of Commerce to  
develop a system for reallocating the bond limitations to other state and local  
units of government.

*Analysis by the Legislative Reference Bureau*

Current federal law, the American Recovery and Reinvestment Act of 2009, authorizes certain local governments to issue several different types of tax-exempt bonds. Some of the bonds, which are called recovery zone facility bonds (bonds), may be issued only by counties or by cities with a population of at least 100,000, and the amount of bonds that may be issued is limited. Federal law allocates the limited amount of bonds that may be issued by counties and cities that meet the population threshold (local units).

Federal law also authorizes local units to waive their allocation, in which case the state in which the local units are located may reallocate the allocation to other units of government in that state.

This bill waives the allocation to local units in this state and requires the Department of Commerce (DOC) to develop a system to reallocate the allocation. Under the bill other units of government, including a city, village, town, county; a special purpose district; a state authority, such as the Wisconsin Housing and Economic Development Authority, the Wisconsin Health and Educational Facilities

Authority, or the University of Wisconsin Hospitals and Clinics Authority; or a local housing, redevelopment, or community development authority, may apply to issue bonds under the reallocation of the federal bond limitation as established by DOC.

Under current law, a city, village, or town may issue industrial revenue bonds for certain specified projects. The bill adds to the definition of "project" facilities constructed using the proceeds from a recovery zone facilities bond or from a Midwestern disaster area bond (tax-exempt bonds authorized under the federal Heartland Disaster Tax Relief Act of 2008).

Under current law, the state, regional planning commissions, federally recognized Indian tribes and bands, and local units of government, including municipalities, counties, school districts, and other special purpose districts, may enter into intergovernmental cooperation agreements for the receipt or furnishing of services or joint exercise of powers. This bill adds a housing authority, a redevelopment authority, and a community development authority to the list of entities that may enter into such agreements.

FE-SL

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 66.0301 (1) (a) of the statutes, as affected by 2009 Wisconsin Act 28,  
2 is amended to read:

3           66.0301 (1) (a) Except as provided in pars. (b) and (c), in this section  
4 "municipality" means the state or any department or agency thereof, or any city,  
5 village, town, county, school district, public library system, public inland lake  
6 protection and rehabilitation district, sanitary district, farm drainage district,  
7 metropolitan sewerage district, sewer utility district, solid waste management  
8 system created under s. 59.70 (2), local exposition district created under subch. II of  
9 ch. 229, local professional baseball park district created under subch. III of ch. 229,  
10 local professional football stadium district created under subch. IV of ch. 229, local  
11 cultural arts district created under subch. V of ch. 229, transit authority created  
12 under s. 66.1039, long-term care district under s. 46.2895, water utility district,  
13 mosquito control district, municipal electric company, county or city transit  
14 commission, commission created by contract under this section, taxation district,

1 regional planning commission, housing authority created under s. 66.1201,  
2 redevelopment authority created under s. 66.1333, community development  
3 authority created under s. 66.1335, or city-county health department.

\*\*\*\*NOTE: This is drafted according to your instructions, but it may not be necessary. See s. 66.0311. Doesn't s. 66.0311 accomplish your goals?

4 SECTION 2. 66.1103 (2) (k) 22. of the statutes is created to read:

5 66.1103 (2) (k) 22. Facilities with respect to which <sup>is issued</sup> either a recovery zone facility  
6 bond under 26 USC 1400U-3 or a qualified Midwestern disaster area bond under 26

7 USC 1400N (a) ~~waived~~ <sup>as modified by P. L. 110-343, title VII, subtit. A section 702 (d) (intro.) and (1)</sup>

8 SECTION 3. 66.1104 of the statutes is created to read:

9 **66.1104 Waiver of recovery zone facility bond limitation. (1)**

10 DEFINITIONS. In this section:

11 (a) "Authority" means a body created under s. 66.1201, 66.1333, or 66.1335;  
12 under subch. II of ch. 114 or subch. III of ch. 149; or under ch. 52, 231, 232, 233, 234,  
13 235, 237, or 279.

14 (b) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a), and  
15 includes a commission created by contract under s. 66.0301.

16 (c) "Recovery zone bond" means a bond described under 26 USC 1400U-3 (b)  
17 (1).

\*\*\*\*NOTE: Is this definition OK? Please let me know if you want the definition to cross-reference, for example, a recovery zone economic development bond under 26 USC 1400U-1 (a) (4) (A) or a recovery zone facility bond under 26 USC 1400U-1 (a) (4) (B).

18 (2) WAIVER. (a) The unused allocation of a recovery zone bond limitation  
19 <sup>shall be considered</sup> received by a city or county <sup>by the city or county</sup> is waived on the effective date of this paragraph .... [LRB  
20 inserts date], and the allocation may be reallocated by the department of commerce  
21 under s. 560.033.

\*\*\*\*NOTE: Is par. (a) consistent with your intent? Part of the instructions state that "the intent is that the waiver will occur by enactment of the legislation, without any

further action by the county or city", which par. (a) accomplishes, but another part of the instructions states that federal law specifies that the county or city "be the entity that makes the waiver, so it is important that the legislation provide that the waiver is made by the counties and cities."

\*\*\*\*NOTE: I'm not sure how to reconcile these instructions. It seems that either the legislation must specify that upon the enactment of the bill the allocation is waived (which it does), or the cities and counties must take action to waive the allocation (which may be required by federal law, but is not done in the bill)

*before the effective date of this paragraph... [LRB inserts date]*

(b) A limitation allocation received by a city or county shall be considered as unused, except for any recovery zone bonds that have been sold, or are subject to a contract for sale that takes effect *before the effective date of this paragraph .... [LRB inserts date]* and are issued within 30 days after the effective date of this paragraph... [LRB inserts date]

(c) Not later than the first day of the 2nd month beginning after the effective date of this paragraph .... [LRB inserts date], a city or county that has a limitation allocation that is not unused, as that term is used under par. (b), shall send written notice to the department of commerce regarding the limitation allocation that is not unused.

(3) REALLOCATION. Any authority or local governmental unit may apply for a reallocation of the recovery zone bond limitation allocation in accordance with the system established by the department of commerce under s. 560.033.

SECTION 4. 560.033 of the statutes is created to read:

**560.033 Reallocation of limitation on recovery zone facility bonds. (1)**

REALLOCATION. (a) The department, by rule, shall establish under 26 USC 1400U-1 (a) (3) (A) and administer a system for the reallocation of the limitation on the issuance of recovery zone facility bonds, as defined under 26 USC 1400U-3 (b) (1), among authorities, as defined in s. 66.1104 (1) (a), and local governmental units, as defined in s. 66.1104 (1) (b).

\*\*\*\*NOTE: The drafting instructions for this subsection directed me to permit Commerce to administer a system for the reallocation of bonds "among the cities, villages,

towns, special districts, authorities, and commissions of the state.” Is this subsection consistent with your intent?

**(2) AMENDMENT TO REALLOCATION.** At any time, the department may promulgate rules to revise the reallocation system established under sub. (1), except that any revision under this subsection does not apply to any reallocation under which the recipient of that reallocation has adopted a resolution authorizing the issuance of a recovery zone facility bond, as defined in 26 USC 1400U-3 (b) (1).

**(3) CONDITIONS.** The department may, by rule, establish any procedure for, and place any condition upon, the granting of a reallocation under this section which the department deems to be in the best interest of the state, including, but not limited to, a requirement that a cash deposit, at a rate established by the department in the rules, be a condition for a reallocation.

(4) CONSIDERATION OF ALTERNATIVE SOURCE OF FINANCING. Before making a reallocation under this section, the department shall consider the availability of qualified Midwestern disaster area bonds, as defined under 26 USC 1400N (a), as modified by P.L. 110-343, title VII, ~~Subtitle A~~, section 702 (d) (intro.) and (1), as an alternative source of financing for a project for which the issuance of recovery zone facility bonds, as defined in 26 USC 1400U-3 (b) (1), are sought.

**(END)**

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**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3954/1instkk  
TKK:.....

**INSERT TKK 5-17**

**SECTION 1. Nonstatutory provisions.**

(1) (a) The department of commerce shall submit in proposed form the rules required under section 560.033 (1) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 2nd month beginning after the effective date of this paragraph.

(b) Using the procedure under section 227.24 of the statutes, the department of commerce may promulgate rules required under section 560.033 (1) of the statutes, as created by this act, for the period before the effective date of the rules submitted under paragraph (a), but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

*create auto-reb X*

*use autoreb X*

**Shovers, Marc**

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**From:** Wilson, Danielle  
**Sent:** Monday, December 14, 2009 3:38 PM  
**To:** Shovers, Marc  
**Subject:** LRB 3954

Hi Marc,

(Separate from the amendment discussion) would you please make one minor correction to LRB 3954/1 to clarify in the summary document that the state would not redistribute portions of the allocations that the counties or cities have sold or that are subject to a contract?

Otherwise, I think it looks really good. I appreciate all of your efforts on this and your patience in working with other parties.

Thanks again! Have a good afternoon.

**Danielle Wilson**  
Office of Senator Julie Lassa  
P.O. Box 7882  
Madison, WI 53707-7882  
(608) 266-3123  
danielle.wilson@legis.wisconsin.gov

12/14/2009



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-3954/1

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2009 BILL

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12/15/09

Today

Page Cat

- 1 AN ACT *to amend* 66.0301 (1) (a); and *to create* 66.1103 (2) (k) 22., 66.1104 and  
2 560.033 of the statutes; **relating to:** waiving certain federal bond limitations  
3 allocated to cities and counties and requiring the Department of Commerce to  
4 develop a system for reallocating the bond limitations to other state and local  
5 units of government.

***Analysis by the Legislative Reference Bureau***

Current federal law, the American Recovery and Reinvestment Act of 2009, authorizes certain local governments to issue several different types of tax-exempt bonds, including recovery zone facility bonds (bonds). The amount of bonds that may be issued is limited. Federal law allocates to counties and to cities with a population of at least 100,000 (local units) the limited amount of bonds that may be issued.

Federal law also authorizes local units to waive their allocation, in which case the state in which the local units are located may reallocate the allocation to other units of government in that state.

This bill waives the allocation to local units in this state and requires the Department of Commerce (DOC) to develop a system to reallocate the allocation. Under the bill other units of government, including a city, village, town, county; a special purpose district; a state authority, such as the Wisconsin Housing and Economic Development Authority, the Wisconsin Health and Educational Facilities Authority, or the University of Wisconsin Hospitals and Clinics Authority; or a local housing, redevelopment, or community development authority, may apply to issue bonds under the reallocation of the federal bond limitation as established by DOC.

INSERT  
ANALYSIS

**BILL**

Under current law, a city, village, or town may issue industrial revenue bonds for certain specified projects. The bill adds to the definition of "project" facilities constructed using the proceeds from a recovery zone facilities bond or from a Midwestern disaster area bond (tax-exempt bonds authorized under the federal Heartland Disaster Tax Relief Act of 2008).

Under current law, the state, regional planning commissions, federally recognized Indian tribes and bands, and local units of government, including municipalities, counties, school districts, and other special purpose districts, may enter into intergovernmental cooperation agreements for the receipt or furnishing of services or joint exercise of powers. This bill adds a housing authority, a redevelopment authority, and a community development authority to the list of entities that may enter into such agreements.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 66.0301 (1) (a) of the statutes, as affected by 2009 Wisconsin Act 28,  
2 is amended to read:

3           66.0301 (1) (a) Except as provided in pars. (b) and (c), in this section  
4 "municipality" means the state or any department or agency thereof, or any city,  
5 village, town, county, school district, public library system, public inland lake  
6 protection and rehabilitation district, sanitary district, farm drainage district,  
7 metropolitan sewerage district, sewer utility district, solid waste management  
8 system created under s. 59.70 (2), local exposition district created under subch. II of  
9 ch. 229, local professional baseball park district created under subch. III of ch. 229,  
10 local professional football stadium district created under subch. IV of ch. 229, local  
11 cultural arts district created under subch. V of ch. 229, transit authority created  
12 under s. 66.1039, long-term care district under s. 46.2895, water utility district,  
13 mosquito control district, municipal electric company, county or city transit  
14 commission, commission created by contract under this section, taxation district,

**BILL**

1 regional planning commission, housing authority created under s. 66.1201,  
2 redevelopment authority created under s. 66.1333, community development  
3 authority created under s. 66.1335, or city-county health department.

4 **SECTION 2.** 66.1103 (2) (k) 22. of the statutes is created to read:

5 66.1103 (2) (k) 22. Facilities with respect to which is issued either a recovery  
6 zone facility bond under 26 USC 1400U-3 or a qualified Midwestern disaster area  
7 bond under 26 USC 1400N (a), as modified by P.L. 110-343, title VII, subtitle A,  
8 section 702 (d) (intro.) and (1).

9 **SECTION 3.** 66.1104 of the statutes is created to read:

10 **66.1104 Waiver of recovery zone facility bond limitation. (1)**

11 DEFINITIONS. In this section:

12 (a) "Authority" means a body created under s. 66.1201, 66.1333, or 66.1335;  
13 under subch. II of ch. 114 or subch. III of ch. 149; or under ch. 52, 231, 232, 233, 234,  
14 235, 237, or 279.

15 (b) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a), and  
16 includes a commission created by contract under s. 66.0301.

17 (c) "Recovery zone bond" means a bond described under 26 USC 1400U-3 (b)  
18 (1).

19 **(2) WAIVER.** (a) The unused allocation of a recovery zone bond limitation  
20 received by a city or county shall be considered waived by the city or county on the  
21 effective date of this paragraph .... [LRB inserts date], and the allocation may be  
22 reallocated by the department of commerce under s. 560.033.

23 (b) A limitation allocation received by a city or county shall be considered as  
24 unused, except for any recovery zone bonds that have been sold before the effective  
25 date of this paragraph .... [LRB inserts date], or are subject to a contract for sale that

**BILL****SECTION 3**

1 takes effect before the effective date of this paragraph .... [LRB inserts date], and are  
2 issued within 30 days after the effective date of this paragraph .... [LRB inserts date].

3 (c) Not later than the first day of the 2nd month beginning after the effective  
4 date of this paragraph .... [LRB inserts date], a city or county that has a limitation  
5 allocation that is not unused, as that term is used under par. (b), shall send written  
6 notice to the department of commerce regarding the limitation allocation that is not  
7 unused.

8 (3) **REALLOCATION.** Any authority or local governmental unit may apply for a  
9 reallocation of the recovery zone bond limitation allocation in accordance with the  
10 system established by the department of commerce under s. 560.033.

11 **SECTION 4.** 560.033 of the statutes is created to read:

12 **560.033 Reallocation of limitation on recovery zone facility bonds. (1)**

13 **REALLOCATION.** The department, by rule, shall establish under 26 USC 1400U-1 (a)

14 (3) (A) and administer a system for the reallocation of the limitation on the issuance  
15 of recovery zone facility bonds, as defined under 26 USC 1400U-3 (b) (1), among  
16 authorities, as defined in s. 66.1104 (1) (a), and local governmental units, as defined  
17 in s. 66.1104 (1) (b).

18 (2) **AMENDMENT TO REALLOCATION.** At any time, the department may promulgate  
19 rules to revise the reallocation system established under sub. (1), except that any  
20 revision under this subsection does not apply to any reallocation under which the  
21 recipient of that reallocation has adopted a resolution authorizing the issuance of a  
22 recovery zone facility bond, as defined in 26 USC 1400U-3 (b) (1).

23 (3) **CONDITIONS.** The department may, by rule, establish any procedure for, and  
24 place any condition upon, the granting of a reallocation under this section which the  
25 department deems to be in the best interest of the state, including, but not limited

**BILL**

1 to, a requirement that a cash deposit, at a rate established by the department in the  
2 rules, be a condition for a reallocation.

3 (4) CONSIDERATION OF ALTERNATIVE SOURCE OF FINANCING. Before making a  
4 reallocation under this section, the department shall consider the availability of  
5 qualified Midwestern disaster area bonds, as defined under 26 USC 1400N (a), as  
6 modified by P.L. 110-343, title VII, subtitle A, section 702 (d) (intro.) and (1), as an  
7 alternative source of financing for a project for which the issuance of recovery zone  
8 facility bonds, as defined in 26 USC 1400U-3 (b) (1), are sought.

9 **SECTION 5. Nonstatutory provisions.**

10 (1) (a) The department of commerce shall submit in proposed form the rules  
11 required under section 560.033 (1) of the statutes, as created by this act, to the  
12 legislative council staff under section 227.15 (1) of the statutes no later than the first  
13 day of the 2nd month beginning after the effective date of this paragraph.

14 (b) Using the procedure under section 227.24 of the statutes, the department  
15 of commerce may promulgate rules required under section 560.033 (1) of the  
16 statutes, as created by this act, for the period before the effective date of the rules  
17 submitted under paragraph (a), but not to exceed the period authorized under section  
18 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b),  
19 and (3) of the statutes, the department is not required to provide evidence that  
20 promulgating a rule under this paragraph as an emergency rule is necessary for the  
21 preservation of the public peace, health, safety, or welfare and is not required to  
22 provide a finding of emergency for a rule promulgated under this paragraph.

23 (END)

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3954/lins  
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**INSERT ANALYSIS**

*no 4* The bill prohibits DOC from reallocating an allocation of the limitation related to certain recovery zone facility bonds, *that have already been* sold by, or that are subject to a sale by, a city or county. The bill also permits DOC to revise a reallocation made under the bill, but prohibits the revision of any reallocation under which the recipient of a reallocation has adopted a resolution authorizing the issuance of a recovery zone facility bond.

2

**INSERT 4-17**

3

unused allocation, as that term is used in s. 66.1104 (2), of the

**Barman, Mike**

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**From:** Wilson, Danielle

**Sent:** Friday, December 18, 2009 3:15 PM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 09-3954/2 Topic: City and county waiver of allocation of federal bond authority

Please Jacket LRB 09-3954/2 for the SENATE.

12/18/2009